

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WRO 2004-0031-EXEC

In the Matter of the Petitions for Reconsideration of the
**NORTHERN CALIFORNIA WATER ASSOCIATION,
THE CENTRAL VALLEY PROJECT WATER ASSOCIATION, AND INDIVIDUAL
PETITIONERS¹**

Regarding Water Right Fee Determinations

ORDER DENYING RECONSIDERATION

BY THE EXECUTIVE DIRECTOR²

1.0 INTRODUCTION

The Northern California Water Association (NCWA), the Central Valley Project Water Association (CVPWA) and other persons and entities, petitioned the State Water Resources Control Board (SWRCB) for reconsideration and a refund of fees assessed by the State Board of Equalization (BOE) on or about January 8, 2004. On April 7, 2004, the SWRCB issued SWRCB Order WRO 204-0011-EXEC, which considered the petitioners' allegations and denied reconsideration. After issuing its order, in May 2004 the SWRCB received from BOE additional letters of protest that were timely filed by the persons identified in Attachment 1. (Cal. Code Regs., tit. 23, § 1077, subd. (c).) This order incorporates Order WRO 204-0011-EXEC by reference. It denies the petitions for reconsideration filed by the persons identified in

¹ The individual petitioners are identified in Attachment 1.

² SWRCB Resolution No. 2002 - 0104 delegates to the Executive Director the authority to supervise the activities of the SWRCB. Unless a petition for reconsideration raises matters that the SWRCB wishes to address or requires an evidentiary hearing before the SWRCB, the Executive Director's consideration of petitions for reconsideration of disputed fees falls within the scope of the authority delegated under Resolution No. 2002 - 0104. Accordingly, the Executive Director has the authority to refuse to reconsider a petition for reconsideration, deny the petition, or set aside or modify the fee assessment.

Attachment 1, collectively referred to herein as “Petitioners,” for the reasons set forth in Order WRO 204-0011-EXEC.³

2.0 GROUNDS FOR RECONSIDERATION

On petition by any interested person or entity, the SWRCB may order reconsideration of all or part of a decision or order adopted by the SWRCB, including a determination that a person or entity is required to pay a fee or a determination regarding the amount of the fee. (Wat. Code, §§ 1122, 1537, subd. (b)(2).) Pursuant to Water Code section 1537, subdivision (b)(4), the SWRCB's adoption of the regulations may not be the subject of a petition for reconsideration. When an SWRCB decision or order applies those regulations, a petition for reconsideration may include a challenge to the regulations as they have been applied in the decision or order.

California Code of Regulations, title 23, section 768 provides that an interested person may petition for reconsideration upon any of the following causes:

- (a) Irregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing;
- (b) The decision or order is not supported by substantial evidence;
- (c) There is relevant evidence that, in the exercise of reasonable diligence, could not have been produced;
- (d) Error in law.

A petition for reconsideration of a fee assessment must include certain information, including the name and address of the petitioner, the specific board action of which petitioner requests reconsideration, the reason the action was inappropriate or improper, the reason why the petitioner believes that no fee is due or how the petitioner believes that the amount of the fee has been miscalculated, and the specific action which petitioner requests. (Cal. Code Regs., tit. 23,

³ The SWRCB is directed to order or deny reconsideration on a petition within 90 days from the date on which the SWRCB adopts the decision or order. (Wat. Code, § 1122.) If the SWRCB fails to act within that 90-day period, a petitioner may seek judicial review, but the SWRCB is not divested of jurisdiction to act upon the petition simply because the SWRCB failed to complete its review of the petition on time. (See *California Correctional Peace Officers Ass’n v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1147-1148, 1150-1151 [43 Cal.Rptr.2d 681]; SWRCB Order WQ 98 - 05 -UST at pp. 3-4.)

§ 769, subd. (a)(1)-(6); § 1077, subd. (a).) In addition, the petition may include a claim for refund. (*Id.* § 1074, subd. (g).)

The SWRCB may refuse to reconsider a decision or order if the petition for reconsideration fails to raise substantial issues related to the causes for reconsideration set forth in section 768.

(*Id.* § 770, subd. (a)(1).) Alternatively, after review of the record, the SWRCB also may deny the petition if the SWRCB finds that the decision or order in question was appropriate and proper, set aside or modify the decision or order, or take other appropriate action.

(*Id.* § 770, subd. (a)(2)(A)-(C).)

To the extent that this order does not address all of the issues raised in each of the petitions for reconsideration, the SWRCB finds that either these issues are insubstantial or that Petitioners have failed to meet the requirements for a petition for reconsideration under the SWRCB's regulations. (*Id.* §§ 768-769, 1077.)

3.0 LEGAL AND FACTUAL BACKGROUND

SWRCB Order WRO 204-0011-EXEC, which is incorporated by reference herein, contains the legal and factual background applicable to these petitions. In sum, Senate Bill 1049 (Stats. 2003, ch. 741) requires the SWRCB to adopt emergency regulations revising and establishing fees to be deposited in the Water Rights Fund in the State Treasury and revising fees for water quality certification. The SWRCB must set a fee schedule that will generate revenues in the amount the Budget Act sets for water right fee revenues. On December 15, 2003, the SWRCB adopted Resolution No. 2003 - 0077 approving emergency fee regulations to meet the requirements of the Budget Act and Senate Bill 1049. The Office of Administrative Law approved the emergency regulations on December 23, 2004, and both Senate Bill 1049 and the emergency regulations became effective on January 1, 2004. BOE issued the first bills by Notice of Determination on January 8, 2004.

On December 17, 2003, NCWA and CVPWA filed suit against the SWRCB and BOE challenging Senate Bill 1049, SWRCB Resolution No. 2003 - 0077, and the SWRCB's fee regulations. By subsequent Stipulation and Order, dated January 20, 2004, the parties agreed, in

part, that by February 9, 2004, NCWA and CVPWA would file a petition for reconsideration with the SWRCB asking the SWRCB to reconsider the disputed fee bills and to set them aside. The Stipulation also provides that NCWA and CVPWA would file the petition for reconsideration on behalf of any individual who pays its fee in full by February 9, 2004, under cover of a letter of protest that references the Stipulation and adopts the NCWA-CVPWA petition for reconsideration. (Stipulation and Order, 4(a)-(b).)

On April 7, 2004, the SWRCB issued Order WRO 204-0011-EXEC denying reconsideration of the petitions for reconsideration. In May 2004 the Division received from BOE approximately 50 petitions on over 90 water right applications that had been timely filed in accordance with the Stipulation, but had not been received by the SWRCB from BOE in time to be included in Order WRO 204-0011-EXEC.

4.0 DISPOSITION OF PETITIONS FOR RECONSIDERATION

NCWA and CVPWA filed a petition for reconsideration on behalf of all their members and non-members who have paid their billed fees in full, under protest, with reference to the Stipulation. As explained above in Order WRO 204-0011-EXEC, in light of the Stipulation, the SWRCB will treat those Petitioners who paid their fees under letter of protest as specified in the Stipulation as having filed or joined in a properly filed petition for reconsideration. Attachment 1 identifies the individual petitioners who have received a fee bill, complied with the Stipulation, and who are properly considered Petitioners for purposes of this Order.

By paying their bills under letters of protest that reference the Stipulation, Petitioners have effectively adopted the arguments raised in the petition for reconsideration filed by NCWA and the CVPWA. Neither that petition nor any of the letters of protest filed by the individual Petitioners raises any arguments that involve factual issues or alleged miscalculations that apply specifically to the bill issued to an individual Petitioner. Nor did any Petitioner provide any points and authorities or other argument or supporting information, aside from their compliance with the Stipulation, to support or augment the arguments made in the petition for reconsideration filed by NCWA and the CVPWA. The SWRCB has reviewed that order, concludes that it correctly decides the issues raised by the Petitioners through their reliance on

the Stipulation, and incorporates by reference the findings and conclusions of that order. For the reasons set forth in Order WRO 204-0011-EXEC, the petitions for reconsideration are denied.

5.0 CONCLUSION

The petitions for reconsideration are denied.

ORDER

IT IS HEREBY ORDERED THAT the petitions for reconsideration are denied.

Dated: June 25, 2004

ORIGINAL SIGNED BY HARRY M. SCHUELLER for
Celeste Cantú
Executive Director

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